



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov>

IN REPLY REFER TO:

3100

(UT-922)

September 19, 2007

CERTIFIED MAIL – Return Receipt Requested

### DECISION

Center for Native Ecosystems	:	Protest of the Inclusion of Certain Parcels
Erin Robertson, Staff Biologist	:	in the May 22, 2007 Competitive Oil
1536 Wynkoop, Suite 302	:	and Gas Lease Sale
Denver, CO 80202	:	
	:	
Forest Guardians	:	
Bryan Bird, Forest Program Director	:	
312 Montezuma	:	
Santa Fe, NM 87501	:	

### Protest Denied in Part

On April 6, 2007, the Bureau of Land Management (BLM) provided notice that 59 parcels (79,842.78 acres) of land would be offered in a competitive oil and gas lease sale on May 22, 2007. The notice also indicated that the protest period for the lease sale would end on May 7, 2007. In a letter received by the BLM on May 7, 2007, Center for Native Ecosystems (CNE) and Forest Guardians protested the inclusion of 32 parcels of land<sup>1</sup>. The parcels, located on public lands administered by the BLM in the Moab, Price, Salt Lake and Vernal Field Offices (FO) are:

<b>Salt Lake FO:</b>	UT0507-004	UT0507-051
	UT0507-049	UT0507-052
	UT0507-050	

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<sup>1</sup> Since Erin Robertson is not a full-time employee of, an officer of, or the attorney for Forest Guardians, she is not authorized to represent Forest Guardians before the Department. See 43 C.F.R. § 1.3(b)(3) (2004); Sigma M. Exploration, Inc., 145 IBLA 182, 186(1996) (“An individual who is not at attorney may practice in regard to a matter in which he represents himself, a member of his family, a partnership of which he is a member, or a corporation, business trust, or association of which he is an officer or full-time employee. The regulation does not authorize practice by an “agent” or an individual performing a service for a client other than as an attorney.”). Therefore, only CNE is recognized as a party to this protest.

<b>Price FO:</b>	UT0507-048	UT0507-063
	UT0507-053	UT0507-069
	UT0507-054	UT0507-070
	UT0507-060	UT0507-071
	UT0507-061	UT0507-072
	UT0507-062	
<b>Moab FO:</b>	UT0507-076	UT0507-090
	UT0507-080	UT0507-091
	UT0507-081	UT0507-133
	UT0507-082	
<b>Vernal FO:</b>	UT0507-088	UT0507-095
	UT0507-089	UT0507-100
	UT0507-092	UT0507-118
	UT0507-093	UT0507-121
	UT0507-094	

By errata notice dated May 15, 2007, the BLM withdrew 28 parcels from the May 22, 2007, lease sale, 27 of which were included in the CNE protest. Consequently, CNE's protest as to these parcels is denied as moot<sup>2</sup>. This decision addresses the remaining five parcels which were included in the sale:

<b>Salt Lake FO:</b>	UT0507-004	UT0507-051
<b>Vernal FO:</b>	UT0507-088	UT0507-121
	UT0507-089	

### General Allegations

The first two pages of CNE's May 7, 2007 protest letter lists the parcels CNE is protesting. After each identified parcel, CNE provides the ostensible ground for the protest. For example, for the parcels at issue in this decision, UT0507-004, UT0507-051, UT0507-088, UT0507-089, and UT0507-121, the protest letter identifies "Heart of the West Conservation Plan Corridor," "Heart of the West Conservation Plan Duchesne Core," "Heart of the West Conservation Plan Book Cliffs Core," or "Central Pacific Railroad Grade ACEC" as the ground for protest. However, after listing the parcels and grounds for protest for each parcel, the next 23 pages of the protest letter present myriad other grounds for protest and citations to information that are not specific and may or may not apply to any one parcel. For example, CNE makes general allegations regarding land use plan revisions, nominated Areas of Critical Environmental Concern, purported "new information" related to the white-tailed prairie dog and Canada lynx, coal bed methane, sensitive species, notices and stipulations, and the National Historic Preservation Act. Other than the list of parcels and grounds for protest presented on the first two pages, the

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<sup>2</sup> UT0507-048, UT0507-049, UT0507-050, UT0507-052, UT0507-053, UT0507-054, UT0507-060, UT0507-061, UT0507-062, UT0507-063, UT0507-069, UT0507-070, UT0507-071, UT0507-072, UT0507-076, UT0507-080, UT0507-081, UT0507-082, UT0507-090, UT0507-091, UT0507-092, UT0507-093, UT0507-094, UT0507-095, UT0507-100, UT0507-118 and UT0507-133.

protest letter makes no attempt to explain how the general allegations may apply to any of the protested parcels.<sup>3</sup>

Apparently, CNE intends its general allegations to apply only to the extent specified in the list of parcels and associated grounds for protest. However, to the extent that CNE intends to raise the general allegations as to the parcels at issue in this decision, UT0507-004, UT0507-051, UT0507-088, UT0507-089, and UT0507-121, CNE fails to provide any rationale explaining how the allegations relate to the parcels. Consequently, CNE's allegations are conclusory and unsupported by specific facts,<sup>4</sup> and its protest is dismissed as to the general allegations. (BLM addresses below CNE's allegations regarding the "Heart of the West Conservation Plan" and the Central Pacific Railroad Grade Area of Critical Environmental Concern [ACEC]). BLM is under no obligation, as a matter of law or policy, to sort through a protestant's laundry-list of alleged errors and to divine which the protestant intended to invoke for a particular parcel and then to determine how it may apply. This would unreasonably divert the time and resources that BLM otherwise needs to manage the public lands as mandated by Congress.

I note that CNE has often and repeatedly taken advantage of BLM's protest procedure as well as the administrative appeal process before the Interior Board of Land Appeals. The protest letter recites that CNE "has a longstanding record of involvement in management decisions and public participation opportunities on public lands" and that its "mission" includes participating in "administrative processes" and "legal actions." (Page 2). Consequently, CNE should be well aware of its responsibilities as a protestant.

For BLM to have a reasonable basis to consider future protests, CNE must identify for each parcel it protests the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence, and a protest may not merely incorporate by reference arguments or factual information provided in a previous protest. The protestant must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.

### **Heart of the West Conservation Plan**

On the first two pages of its protest CNE lists parcels and identifies the issue(s) raised in the protest for the parcel. Parcels UT0507-051, UT0507-088, UT0507-089, and UT0507-121 are identified as "Heart of the West Conservation Plan Corridor," "Heart of the West Conservation Plan Duchesne Core," or "Heart of the West Conservation Plan Book Cliffs Core." However, apart from this listing on the first two pages, the protest fails to address these areas or their significance, nor does the protest indicate that there is new information about these areas that is relevant to BLM's leasing decision. To the extent that CNE intended to rely upon arguments

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<sup>3</sup> The general allegations in CNE's May 7, 2007 protest letter appear to be largely boilerplate used in other protests CNE has made to BLM.

<sup>4</sup> It is well established that BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 17, 20-21 (1992); John W. Childress, 76 IBLA 42, 43 (1983); Patricia C. Alker, 70 IBLA 211, 212 (1983); Geosearch, Inc., 48 IBLA 76 (1980).

similar to those it has presented in previous protests regarding Heart of the West Wildland Network Design, those arguments are also rejected.

### **Central Pacific Railroad Grade ACEC**

The CNE protest contends that parcel UT0507-004 is within the Central Pacific Railroad Grade ACEC. BLM records show that the existing ACEC does not extend into the nominated parcel.

### **Conclusion**

For the reasons discussed above, the BLM denies CNE's protest for parcels UT0507-004, UT0507-051, UT0507-088, UT0507-089 and UT0507-121. Parcel UT0507-004 is the subject of another protest, and depending on the resolution of the other protest, the BLM will issue or not issue this lease. The BLM will issue leases for parcels UT0507-051, UT0507-088, UT0507-089, and UT0507-121 subsequent to issuing this decision.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B §4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### **Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those

parties who purchased the subject parcels at the May 2007 sale and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

/s/ Selma Sierra

Selma Sierra  
State Director

Enclosures

1. Form 1842-1 (2pp)  
2. List of purchasers (1pp)  
cc: List of purchasers (5)  
Office of the Regional Solicitor, Intermountain Region, 125 South State Street,  
Suite 6201, SLC, UT 84138  
  
bcc: WO-310, 501LS  
Field Offices, Salt Lake, Vernal  
Reading Files, UT-910, UT-930, UT-922, UT-952  
Central Files

TAThompson:tt.05/23/07.May 07.CNE Protest Response

Lease Purchasers  
May 22, 2007 O&G Lease Sale  
CNE Protest

Dolar Energy LLC  
935 E South Union Ave., D-202  
Midvale, UT 84047-2393

Elk Resources, Inc.  
1401 17th Street, Suite 700  
Denver, CO 80202

White Land Services, LLC  
1051 East Fairway Drive  
North Salt Lake, UT 84054

Retamco Operating Inc.  
P.O. Box 790  
Red Lodge, MT 59068

SBG Forever, Inc.  
3848 Campus Dr., Ste. 201  
Newport Beach, CA 92660